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COMMITTEE ON EDUCATION
January 31, 2005
LB 502, 595, 616, 634, 704, LR 23

The Committee on Education met at 1:30 p.m. on Monday, January 31, 2005, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 502, LB 595, LB 616, LB 634, LB 704, and LR 23. Senators present: Ron Raikes, Chairperson; Dennis Byars, Vice Chairperson; Patrick Bourne; Gwen Howard; Gail Kopplin; Vickie McDonald; Ed Schrock; and Elaine Stuhr. Senators absent: None.

SENATOR RAIKES: Good afternoon and welcome to this hearing of the Education Committee of the Nebraska Legislature. I'm pleased you could be here this afternoon. We will hear six bills, posted on the outsides of the hearing room, and we'll do them in that order as far as we know, unless we run into some hitch with an introducer not being able to appear at the right time. Let me begin by introducing the committee. To my far right will be, and as a matter of fact is, Senator Pat Bourne from Omaha. Next to Senator Bourne is Senator Kopplin from...Gail Kopplin from Gretna, Nebraska. Then Senator Elaine Stuhr, Bradshaw. Then Tammy Barry, our committee's legal counsel. I am Ron Raikes, District 25. To my left is Senator Dennis Byars; he's Vice Chair of the committee. Then we will have Senator Vickie McDonald from St. Paul, Nebraska; Senator Gwen Howard from Omaha, Nebraska; Senator Ed Schrock, Elm Creek; and finally, Kris Valentin, our committee clerk. We will follow, just to remind you quickly, the usual procedure of having an introduction by a member of the Legislature, followed by proponent testimony, opponent testimony, neutral, and then potentially a close by the introducer. If you have cell phones, please disable them. We would like to have you fill out a form which you'll find at either corner of the room. Someday we'll make the advance of actually getting some sheets put on this table, too, so that you can grab one there if you haven't before. But that'll take us awhile; institutional hurdles to overcome. Anything else? I don't think of anything. Senator McDonald has just arrived so we're almost at full force, but even with the group we have, we will begin. And our first bill is LB 502. Senator Stuhr.

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LB 502

SENATOR STUHR: Thank you, Chairman Raikes.

SENATOR RAIKES: While you're getting settled, Senator, I did forget to mention that we will use our light system for testifiers. We would like you to confine your comments to five minutes. You'll be warned with a yellow light when you have a minute left, and then the red light will signify that five minutes are gone, and we'd appreciate it if you could operate within that framework, except I will point out while Senator Stuhr is there, that that will not apply for the introducer. Senator Stuhr, excuse me for interrupting.

SENATOR STUHR: All right, that's fine. Thank you, Chairman Raikes and members of the Education Committee. For the record, my name is Elaine Stuhr, S-t-u-h-r, and I represent the 24th Legislative District. I come before you today to introduce LB 502. And LB 502 introduces a concept to recognize the justifiable higher cost associated with operating a small school district in the state of Nebraska. The bill would essentially create a cost curve approach in the standard cost grouping so the unique costs of operating a smaller school will be recognized under the current formula. Originally, this bill was introduced by former Senator Wickersham as LB 668 in 1999. So that's been awhile ago. The LB 502 concept was first brought to my attention by the Nebraska School Finance Coalition and the Nebraska Rural Community Schools Association. Both the School Finance Coalition and the Nebraska Rural School Community Schools Association support changes to the school finance formula that recognize school size, and both groups support the reforms proposed in LB 129. LB 502 serves to highlight only the school size issue, and I'm asking that the committee hold the bill as a possible mechanism to address the school size issue in the future. Matt Blomstedt will provide some of his insights on the merits and the approaches used in the bill.

SENATOR RAIKES: Okay, thank you, Senator Stuhr. Questions? I see none. Thank you, Senator.

SENATOR STUHR: Thank you.

SENATOR RAIKES: First proponent. Matt, welcome.

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MATT BLOMSTEDT: Good afternoon, Senator Raikes and members of the Education Committee. Thanks for the opportunity to testify on LB 502 this afternoon. As Senator Stuhr mentioned, LB 502 is not a new concept. It was originally introduced as LB 668 in 1999 by former Senator Wickersham. At that time, the Nebraska Rural Community Schools Association and the Nebraska School Finance Coalition had contracted with Dr. Larry Tonjes (phonetic), a school finance consultant, to examine issues related to school finance in Nebraska. One of the recommendations from Dr. Tonjes (phonetic) eventually became LB 668. LB 502 is the same concept which seeks to create a size adjustment factor and recognize the cost differences per pupil that are created by economies of scale. These additional costs are real, and most other states recognize some size factor in their school finance formula. In 1999, Dr. Tonjes (phonetic) noted that all of Nebraska's neighbors have some recognition of school size, and this is still true to the best of my knowledge. NRCSA and the Nebraska School Finance Coalition are supporting the continued discussion on LB 129 as a comprehensive school finance reform. However, as the discussion continues, we want to also continue to develop specific proposals that address school size. LB 502 is one possible way of addressing school size, but it does nothing to address other problems such as declining enrollment, poverty, English language learners, et cetera. All those other issues constantly need your attention and time. We hope to continue these conversations with you for the future, and ask that you hold LB 502 as a possible tool for incremental changes to the current formula. Thank you for your continued efforts to address school finance concerns for the state, and thank you, Senator Stuhr, for introducing this bill.

SENATOR RAIKES: Well, and while we're at it, thank you, Matt. Any questions? Yes, Senator Byars.

SENATOR BYARS: Senator Raikes, thank you. Thanks, Matt. In doing the fiscal note, has there been any consideration given to the fact that if LB 126 were passed, what type of effect that would have on this fiscal note?

MATTHEW BLOMSTEDT: If LB 126, is that what you said...?

SENATOR BYARS: Is passed. That's correct.

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MATTHEW BLOMSTEDT: The Class I bill?

SENATOR BYARS: That's correct.

MATTHEW BLOMSTEDT: I don't believe it would have any impact from the standpoint that this is supposed to address system costs and system need. So, yeah, it's possible that it could have some impact I suppose. But it would be on how students end up in different districts and which ones those may, you know, may be. But, how's that for an, I'm not quite sure but I don't think it would have too much impact.

SENATOR BYARS: Well, I would think it would. If you were to assume that, let's say, even 25 percent or 50 percent of those students would be assimilated into larger populations, larger schools, the sparse and very sparse, the numbers issue in this particular formula would be tremendously affected I would think.

MATTHEW BLOMSTEDT: I'm not sure, because of the way that we do system costs right now, we kind of count the Class I's as part of that system, and this is developed on a system needs calculation. So there may be some issues in how you would address it. I mean, if LB 126 passed, you'd have still approximately the same number of systems existing in the state as what we currently have, if that makes any sense. This isn't, this wouldn't be determining needs school district by school district.

SENATOR BYARS: Okay, all right. Thank you, Matt.

SENATOR RAIKES: Okay. Other questions? Matt, how would you compare this sort of a concept with the one in LB 129? I know you're familiar with that one.

MATTHEW BLOMSTEDT: Yeah. This is maybe what you would call a more typical weighting approach to address school size. I mean, for example, how we weight poverty students. Well, you might be able to weight something based on a small school. This does some of that. It essentially weights on a moving scale, so the smaller school gets more weight than the next larger school, and so on. So it has some similarities in what it's trying to attempt. I think under LB 129 the approach is to compare schools that are of that

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similar size, and so it's probably more, maybe more exact, if you want to call it that. I mean, it's actually comparing an average of schools that are of a similar size. This is comparing an average cost at one end of the scale, between 250 and 350 students, and all schools over 900, for an average, and then coming up with a weighting system. So I think under LB 129 you might even say it's more, maybe a more exact way of handling it. The other thing, like I mentioned, this doesn't address declining enrollment, and LB 129 actually does address declining enrollment issues.

SENATOR RAIKES: Okay, anything else? Well, I gather from what both you and Senator Stuhr say, that this is not necessarily offered as a stand-alone proposal. This is something to hang onto.

MATTHEW BLOMSTEDT: I think it...I mean, from our perspective, if LB 129 does not end up moving forward, we're going to continue to work on issues that address school size and declining enrollment. And so this is one, at least one concept. There's several others that I've worked up every once in a while that I think might be able to address those issues at some point in the future if we don't have luck on LB 129.

SENATOR RAIKES: Okay. Thank you, Matt. Other proponents, LB 502?

CHARLES PATTERSON: Senator Raikes and Education Committee senators, I'm Charles Patterson, chairman of the Nebraska School Finance Coalition, from Callaway. I spell the name C-h-a-r-l-e-s and P-a-t-t-e-r-s-o-n. The Nebraska School Finance Coalition supports LB 502, and we want to thank Senator Stuhr for introducing it for us. One reason we had her introduce this bill was, we're for LB 129, with a little fine-tuning. I think you all know that. But we feel that if that don't go, this bill is maybe pretty necessary for some schools. We realized right from the start that LB 806 was not going to really take care of the standard cost grouping schools that were below 900 students, very good. Now, due to changes in school and stuff since we first introduced this, that 900 figure might be too small right now for this to fit in. But this is the way this bill is written. It maxes out at 300 students, so if a school is under 300 students, the factor don't keep raising. It caps

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right there. With our levy caps, now, we have schools that can't seem to make ends meet very good, and they're using up their cash reserves. Some of them have went to an override, and some of them can't even get a vote to pass on overriding the levy, so they're really in a bad way. And I don't know; they can't hardly cut education any more of their students or they aren't going to have an education for their schools, for their kids. Even consolidated schools are running into the trouble of the same thing. After their incentive money from consolidation is gone, then they're back where they were before. So this factor is very necessary...could become very necessary for those school systems. So if LB 129 can't be fine-tuned enough to get the votes, we recommend that you think about using LB 502 or something similar to it. Thank you.

SENATOR RAIKES: Perish that thought. Thank you, Charles. Any other questions for Charles? I see none. Thanks for coming down today.

CHARLES PATTERSON: Okay, you bet.

SENATOR RAIKES: Additional proponents, LB 502. Do we have other proponents for LB 502? Please, come on up. How many opponents for LB 502? Okay, please go ahead. We should probably get Senator Kruse on the way.

PAUL UNDERWOOD: Thank you, Senator Raikes and the Education Committee. Paul Underwood, U-n-d-e-r-w-o-o-d. I'm chairman of our McCool School public relations committee in Senator Stuhr's district, and we thank Senator Stuhr for bringing this bill up. And what I have to say is really brief here, but we think it's important that the finances on the small schools deserve some special consideration, rather than being grouped into the larger school districts. And whether it's this bill or LB 129, we think some avenue like this would be very beneficial. We know that we need to keep our small schools and our small communities viable, and this is just one small factor that would be a huge part. So thank you.

SENATOR RAIKES: Thank you, Paul. Questions for Paul? Thanks for coming over today.

PAUL UNDERWOOD: You bet.

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SENATOR RAIKES: All right, any other proponent testimony? Opponent testimony on LB 502? Neutral testimony, LB 502? Senator Stuhr, would you like to close? Senator Stuhr waives closing. So we're not ready for all this. Senator Kruse is, I think, on his way, so if you'll stand at ease for just a moment, we'll await his arrival.

AT EASE

SENATOR RAIKES: There he is. Senator Kruse, welcome.

SENATOR KRUSE: Thank you.

SENATOR RAIKES: LB 595, we'd like to hear from you.

LB 595

SENATOR KRUSE: I'm glad to hear that, and I'm glad that's the number you want to hear about. Senator Raikes, members of the committee, staff, good afternoon. It's good to be welcomed. My name is Lowen Kruse, L-o-w-e-n is the difficult part of that. Many have commented, too many have commented actually, that the subject matter is a weighty matter. I come to you not as an expert. I want to make that very clear. I have the highest respect for this committee, for your Chair, your counsel, and for school people who have worked with the weighting factor and wrestled with it over the time. And I'm not about to pose as an expert. I offer this bill as one more tool for the committee and the schools and the public, to increase dialogue on the formula. That's my purpose: to focus on weight factors. I seek dialogue between us and the schools, which the public can understand, and therefore hopefully support. The lawsuits have not done that, and our bills, which get into a lot of technical things, add more complications. Frankly, the floor will not understand the formula and you all know that. If you don't know that, I'm sorry to disappoint you. And the public certainly will not understand the formula. But the public can understand that limited-language students and students with low-income families cost more to educate. And I think we need to push that message home. It will help if we are clear. I do not have confidence in the examination of isolated programs and

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their costs. I understand why you do that. You are an attempt to be more specific and accountable. But I simply would make the plea today, the solution must be more holistic instead of isolated. It must involve all of the district schools and the community. Good studies have provided some consistency in cost findings, and I'm not going to try to evaluate those. The federal government has declared a figure, but what's clear to every one of us is that what we presently do is low. I will speak only to one of those factors since it's the one with which I have some knowledge. A low-income student whose family has short-term problems and a student in generational poverty are two very different people. I'm not telling you anything new, but I think we need to underline that, and we...I would hope that the public would come to understand the challenge of that. Ruth and I, especially Ruth, have worked for years on generational poverty. In fact, it wasn't the way we described her job description, but I would say she was working full-time on generational poverty with individuals and families in the community for 15 years. We learned quite a bit. I do not propose strategies. I learned enough during that time to know that I don't have the strategy for you. But I know that the strategies must be holistic; they must involve everybody around. I have been a mentor to grade school students. I have asked that student each week when he, to take one of them, came, where he was living now, how he got back and forth to school, and so on. That's the way the conversation started each week. I had contact with parents, grandparents, extended family, and they, in that process, introduced me to persons who fear being embarrassed and are not going to go to school to be embarrassed. I have never met a teacher who has any intention, directly or indirectly, to embarrass a student or a parent. But these were not going to show up. I have been involved in the reading program in grade school. One of my books is a curriculum resource in Nebraska history, and it's fun to read from that. But you know, I am well-acquainted with...aware of what I am doing. I am trying to enforce the English language; sometimes being a model of it for those with language challenge--that's scary--but often, more often, being a model of precise and articulate language for those who thought they spoke English to begin with. That's even more scary. I have been a part of a group of volunteers who hangs out in the gym after school so that any student who feels that he or she needs help with homework

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can come and get it with no questions asked. It was and has been a remarkable experience during which I appreciate even more what our teachers do. I was a math major, but third grade math in that setting with that boy and Lowen, is intimidating, I must say. I'm not quite sure what language and images the teacher is using. And unfortunately I had never in that situation had enough, found enough time with the teacher to be able to brief me on how math is being taught at that level. But I did find out, just following good educational procedure, that you can ask that student the question if you break it down into small pieces. How do you carry over when one column gets over ten? How do...what does your teacher tell you about this and that? And help that student to understand that he, let's say, really already has the pieces; he's just not put them together. It takes a awhile; it takes quite awhile. But he is equipped. And I must say this real excitement is a touching excitement when he owns that question. I very seldom had a student who wanted me to give a shortcut to the answer. They want to learn. I'm not telling you again anything you don't know, but I'm telling you from my experience in the real world that students of the generational poverty, which is, again, so different, would certainly increase the teacher's load by at least 50 percent. That's just my judgment; that's not professional. I recognize that we have to do that. But the main point that I'm trying to make and communicate to you is that the community can help, if we've got more time with the teachers, if the community understands that this is critical to the teaching of that low-income student or to the second language. The community must be involved. The neighbors of those grandparents who are keeping this boy were part of the problem in the boy not showing up part of the time, and they didn't understand how they could reinforce that. It's just that simple and direct. I believe that together we can, we in the schools, can see education as a, of a weighted child, as a challenge that we all can participate in, but it is a challenge to the whole system. I thank you.

SENATOR RAIKES: Thank you, Senator. Questions for Senator Kruse? Well, again, thank you. Are you going to stick around or you do got...?

SENATOR KRUSE: I will; I will.

SENATOR RAIKES: Okay, good. All right. We'll move to

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proponents of LB 595. Dennis, welcome.

DENNIS POOL: (Exhibits 1, 2) Good afternoon, Senator Raikes, Education Committee. My name is Dennis Pool, P-o-o-l. I'm assistant superintendent for the Omaha Public Schools in the area of general administrative services. Omaha Public Schools supports LB 595. We believe it recognizes the increased costs of providing an equal opportunity to learn to meet outcomes that are established by state standards. LB 595 is not revolutionary. It works within our current system. It seeks a more accurate reflection of needs in the formula. LB 595 addresses three areas where we believe the current weighting factors do not meet the true need: poverty, limited English proficiency, and all-day kindergarten. Currently, Omaha Public Schools gets about 18 cents per dollar to offset poverty costs. Why isn't this enough? Well, the lack of resources means much more than no money. It means a lack of emotional resources upon which we have to draw, lack of knowledge resources, lack of physical resources, lack of support services, and lack of role models. Poverty means highly unpredictable environments. A child in an unpredictable environment won't learn to predict. If he can't predict, he won't be able to identify concepts of cause and effect. If he doesn't identify cause and effect, he won't identify consequence. And if he doesn't identify consequences, he may not be able to control impulsive behavior. And if he doesn't control his behavior, he certainly won't be able to achieve at the expectations of our state standards. A child with all of these challenges, however, can still be talented, maybe gifted, and maybe able to meet all of these high academic standards. But to do so, the lesson the child has no opportunity to learn elsewhere must be incorporated in the school. This takes additional time, additional teachers, and it does take additional funding. Last week I testified about 5,500 English language learners, speaking 35 different languages in our school district, but I didn't have a chance to tell you about real students, like the young lady who came from Sudan at the age of 17, sent to the U.S. under an arranged marriage, entered our schools after arrival, speaking no English, married and in her first months of pregnancy. In her first weeks in our schools, she learned lots of things, including that the globe is round. Why is her education critical? Because before long, her child will be entering our school as one of our students, and her

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child's success is, in part, dependent upon her own success. Kindergarten, all-day kindergarten is underfunded. Kindergarten class sizes should be small for the purpose of meeting the needs of these children. A kindergarten student, like a high school student, may need more room, require significantly more manipulatives in their instruction. They need the hands-on experience. Those are all very important. LB 595's weightings are aligned with what research has said to be more appropriate. Cost studies in several states consistently show that, on average, the cost of serving an English language learner is about twice that of an average child. The United States Congress itself has set a standard of an additional 40 percent per low-income student as compared to the average student. Congress research also shows that 40 percent would be an appropriate number for students in poverty. Education Trust has used 40 percent weighting built into it as a federal standard. Staffing small kindergarten sizes alone, it can be conservatively estimated an additional 40 percent. We already assume that that 40 percent is what it costs to educate a high school student, and this aligns with what kinds of services and programs are needed. Now, after review of the bill of the fiscal note, we became aware that there were big winners and losers in this. This was not our intent, but simply to recognize the proportionality of what these weighting factors are compared to their current amounts. We are willing to work with staff and others as we work through the process of this weighting process. LB 595 is an important bill and we urge you to advance it or consider it as you move forward with school funding. Again, thank you, and I'd be glad to answer any questions that you might have.

SENATOR RAIKES: Thank you, Dennis. Questions for Dennis? Well, we appreciate your offer to work with us, as always. The good news here on the fiscal note is that there is not an increase expenditure to the state. The bad news is, we're shifting \$40 million between schools.

DENNIS POOL: This is a struggle as to how to put this into a formula to make it reflect the additional need. One of the things that was considered was to come up with an...use the average, the adjusted costs, and divide that as the divisor, but when you use the weighted adjusted, you get into increasing the number of weighted adjusted formula

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students. It would reduce the amount that's in the cost group cost, and therefore it presumes then that it costs less to educate the average child, and that certainly is not necessarily the predictor that you'd want to have either. But we do believe that proportionality is more accurately reflected of what research says in that, and how you would work through that process. The formula is mathematical and that needs calculation. I actually kind of figured that if you were to do it by doing the average cost and then doing the weightings, and even using the weightings would increase the formula need. But then when adjust it this way, it's a significant...could be a significant bump.

SENATOR RAIKES: Well, let me pursue our conversation of a few days ago. You'd have the burden of arguing for a shift of funds under the current proposal, and I understand it's a little bit hypothetical for the reasons you just explained--I mean that you would actually do it. But you would have the burden of explaining why you're going to shift \$40 million among schools, particularly when it seems to me when you couldn't really point to any programs that you needed to implement in those receiving schools. Is that a fair statement or not?

DENNIS POOL: Senator, the services that are provided to our students are not programmed specifically for poverty students. They're for students in need. I think even Senator Kruse's introductory comments, is there a significant need to do these additional things, the tutoring, the small class sizes...?

SENATOR RAIKES: But tutoring isn't a program. Tutoring is something you could point to, is it not?

DENNIS POOL: Let me say that the way that, under some of the proposals that we have, is is tutoring going to be for just poverty students, or is it for all students that need that tutoring service? How do you differentiate between whether that's for just poverty, is it a poverty program?

SENATOR RAIKES: Well, let me speculate, I mean just to try to answer that because I think it's an important point. What if you said that tutoring poverty students was a poverty program; tutoring nonpoverty students was not a poverty program?

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DENNIS POOL: Then that's what should be specifically said, that part of it. Because what happens is, is who's going to say what programs are and what programs aren't "poverty programs?" We offer lots of services to our children in poverty.

SENATOR RAIKES: Okay, and I was...all right, and I don't want to press this beyond it's worth. But I was mostly aiming at the question...well, let me back up a second. Forty percent more for poverty kids to, I think that's what the handout said, well, how would you know that 40 percent is the right number if you don't really know what it is you do differently in terms of actually running a school system that has poverty children in it?

DENNIS POOL: Well, for one, you would certainly do some things that you know are educationally sound, that meet the needs of all your children in your building. If the preponderance of those children are in poverty, there are things that you can do that would help them be able to focus on education, be able to come to school to be safe, to know that they have an opportunity to be in a secure environment. Those are all things that you would do in those schools. Now does that mean that only the students in those schools that are in poverty will get those services, or that other students don't get those services, or how do you differentiate who gets and who doesn't?

SENATOR RAIKES: Well, let me assume worst-case just to run something by you. Say you have 70 percent poverty students in a particular building, and you administer a program which serves these poverty students, but also other students. What if 70 percent of the expense for that program is a poverty program expense, and the other 30 percent is a part of your basic funding for your school system?

DENNIS POOL: Okay, and you were going to determine that? How do we determine that, is the question.

SENATOR RAIKES: So, say it's tutoring. Okay, how much...there's no way to determine how much it costs to provide tutoring services?

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DENNIS POOL: Well, it depends on whether it's a volunteer tutoring service, or it's a staffing tutoring service, how's that going to be funded is the question? We certainly have volunteers that come into our schools that tutor; principals that will line up people to help out to do those things; teachers do the same thing. So are those direct costs to the tutoring program or not? Are they going to be? So if you're going to say that this child is a poverty child, so therefore they have learning problems. Well, we don't know for sure if that child is going to have learning problems, and you're presuming that if they're a poverty they do have. All we're saying is it's a good predictor. So when you have a tutoring program, now you're going to, are you going to go down to a student-by-student kind of a program and say, okay, let's identify the poverty students and we'll put them over here and we'll provide them with tutoring services? And the 30 percent that's over here, they're not poverty so they don't get tutoring services? What happens if some of those 30 percent of those kids who are not at poverty...

SENATOR RAIKES: Well, of course, that was counter to my suggestion, that you go ahead and offer the program as you suggest for the whole school, and if 70 percent of the students are in the school are poverty students, then 70 percent of the program is legitimately assigned to that part of your budget that is for poverty students. The other 30 percent is to the funding that you do get as a school, your basic funding, which is not directly associated with poverty.

DENNIS POOL: And those were some of the premises in LB 129 that simply are not identified. How are those things identified, and who will identify them? And I think you'll hear from some that we have a lot of programs that are going to be very difficult to identify in that case. But certainly, the resources that the state provides us give us...the accountability piece is there. The accountability pieces and how our students, the outcomes of our students, whether they are successful, whether they're able to meet these state standards. And we're doing all we can do just to make sure we're meeting those standards that the state provides and the accountability that goes with them. We lose our...if we don't meet the standards, then we can lose our accreditation. We lose our accreditation, we lose our funding. Those are severe sanctions if you don't meet the

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state standards.

SENATOR RAIKES: Okay, any other questions for Dennis?
Thank you.

DENNIS POOL: Um-hum, thank you.

SENATOR RAIKES: Other proponents, LB 595?

MICHAELA REILLY: Good afternoon. Thank you for inviting me to testify. My name is Michaela Reilly, M-i-c-h-a-e-l-a R-e-i-l-l-y. I've been a teacher for 31 years, the last eight years teaching English as a second language for Omaha Public Schools, and the last five in a program called the Teen Literacy Center, which is a program for high school age ESL students who do not have the literacy skills necessary to make it in a regular high school ESL program. And in my years of teaching, I see very, very different needs for these students. And I'd like to just tell you a little bit about what I see in my population. I teach students from Central America, Mexico, Sudan, and Somalia, and we have had students from Albania. So we have lots of languages and lots of cultures in the population. I taught at a high school when I taught special education, which was before I taught English as a second language. And I think the biggest difference in my program is that when you teach in a regular high school class, you teach a subject to a group. When you teach with English as a second language students, you have to tailor everything you teach to the students. So it's constantly being adapted, constantly being changed. I can have eight different reading groups in a class of 13 students just in order to meet everybody's needs. You cannot make any assumptions about our students that you could make in a regular class, number one, being communication. I can't just pick up the phone and call a parent when I need to communicate something to them. We have staff that are Spanish-speaking and that's a big help, but we have only one liaison in Omaha Public Schools who is Nuer and Arabic-speaking, and one who is Somali-speaking. So I have to make arrangements ahead of time if I need to communicate something to the homes through these people. That's time-consuming and it's often after the fact, when you really want to talk to a parent. We have four young women who are mothers in our program and that affects attendance, it affects fatigue in school, it affects health

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issues. I called one of my student recently because she had missed three days already this semester, and she said, my baby was sick, what do you expect me to do? And she's right. And we...in their countries, to be a mother at their age is acceptable, and we have to be sensitive to that and not make judgments about them based on our culture. The class size needs to be small just because you have to individualize so much. And if you have more than 15 students, and even 15 is too many, you cannot meet everybody's needs everyday. Somebody gets neglected, and as a teacher, I don't like to see that happen. The space issue is sometimes a problem. I think sometimes ESL, and before when I was in special ed, the classroom is an afterthought. And they figured that since you're sort of a support program, you can be put in a smaller space, and yet when you're individualizing and doing small groups, that's not true. We have basic needs we have to meet for these students--clothing needs. I had kids from Somalia who didn't have, who were wearing heels with no socks in the snow, had no hats, no coats, no gloves, boots; we have to supply those. And I know the teachers from Liberty will address that, so I keep a supply of clothing for my students which I begged for from different foundations and staff members to keep for them. We have refugee issues. We have some students with what I would almost call posttraumatic stress symptoms. They withdraw, they have anger management difficulties. So we need to address those. There's so many issues we need to address before we can teach them, and our energies and our time go to those because it doesn't make sense to teach them if they don't have those needs taken care of. We have health problems with a lot of them. I've had to administer medicine to students with TB who've come from Sudan because we didn't have a full-time nurse. We have to make sure that the vaccinations are in place before they come. That's difficult sometimes. Paperwork is really difficult for them and their families and trying to communicate in all of those languages. I think I have seven languages in my small group because of the different dialects and tribal languages. So all of those things are time-consuming, yet they have to be done before you can teach. So I think we require so much more manpower and time and expertise, because you cannot make any of the same assumptions that you would make in a regular class.

SENATOR RAIKES: Okay, thank you. Questions? Help me

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with...I got the impression while you were talking about your experiences that you work with these students as a group of students?

MICHAELA REILLY: Yes. We have 30 students in the program, and so the largest group I would probably work with would be 13 to 15, depending on attendance, because that can change with this population.

SENATOR RAIKES: So are these in a separate classroom where you work with these, or how does that happen?

MICHAELA REILLY: We, our program is unique to OPS. It's the only place; it's at the career center which is the west end of the TAC Building and it is specifically for students who couldn't be in a high school ELS program in South High School, Benson High School, because they don't have literacy in their native language. So they're learning to read and write for the first time.

SENATOR RAIKES: So typically these would not be, say, one or two students out of a class of 20 students that were...18 of which were non-English language learner students?

MICHAELA REILLY: The academic issues might not be typical in a typical ESL program, but a lot of the emotional and social issues an ESL teacher would face in a high school or an elementary program...

SENATOR RAIKES: But I mean physically, these...you don't work with a group of, say, 20 students that has two students that are the ELL students, and the other 18 are...?

MICHAELA REILLY: No, sorry.

SENATOR RAIKES: Okay.

MICHAELA REILLY: No, they're all ELL. They're all free lunch, with the exception of one student who had to pay reduced lunch because she works full-time and comes to school full-time. So my program would be 100 percent poverty.

SENATOR RAIKES: Okay.

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MICHAELA REILLY: Yeah.

SENATOR RAIKES: Okay. Any other questions? Thank you very much for being here.

MICHAELA REILLY: Thank you very much.

SENATOR RAIKES: Next proponent, LB 595.

JAN KRACL: Buenas tardes, Senator Raikes y Senadores del Comité de Educación. Gracias para la oportunidad de hablar para la LB 595. Mi llama Jan Krac1, K-r-a-c-l. (Inaudible) veinte nueve (years) que soy una maestro...

SENATOR RAIKES: Excuse me, would you spell that again? K-r...

JAN KRACL: a-c-l.

SENATOR RAIKES: Thank you.

JAN KRACL: ...soy una maestro de Schuyler Central High School. If some of you did not understand what I said completely, I said I'll repeat that in English. Senator Raikes and senators of the Education Committee, thank you for the opportunity to speak for LB 595. My name is Jan Krac1. I've been a teacher at Schuyler Central High School for 29 years, and for 15 of those years, I've worked with the ESL program. We have a lot of the same problems and the same poverty level with those students that Omaha Public Schools do, or Lincoln Public Schools. The difference is that our students are less in number. In 1990-91, we started with three students. We had three students who needed to English at the high school level. In 2003-04, that number was 76; 76 students who did not yet know English well enough to compete equally on a test or in an academic classroom with native speakers. And that's one of the things that I think is the highest cost. I don't think that everyone, not even some of my fellow teachers, realize that it can take from five to seven years to become fluent enough to compete equally with native speakers in a classroom, particularly at the high school level. Many of my students have come from backgrounds where they did not attend school, except for maybe two or three years. I had one boy that did not ever attend school in his life until he came to Nebraska

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in May of his eighth grade year, and then he came to high school. His native language was a dialect of Spanish, and so Spanish was technically his second language and English was his third language. It takes a lot of time and a lot of work to educate those students. Those students are all students that want to be successful. They want to learn English. Some of them want to go on to college, but they don't even think that that's anything but a dream. They don't think it's a possibility. I've had a lot of students who are very well-educated and...in their own country, and they do make quicker progress. But research has shown, and I've seen for the past 15 years, that seven years is about average. And so, if you have a 15- or 16-year-old student who is starting in the ninth grade, they're going to probably be 21 before they are fluent enough and can earn enough credits to graduate. And that's one of the reasons why working with ELL students requires more money. A lot of our students are on free or reduced lunch. Some of them don't apply for that because they're afraid. They don't want to fill out papers. They may not be in this country legally or someone in their family may not be legally here. I have a student who works full-time and tries to attend school full-time. He arrives home at six o'clock in the morning, tries to sleep for two hours, and then come to class. We do have a program at the Cargill Meat Solutions Packing Plant in Schuyler that offers education to people over 16 years of age. And we've told him, you know, this would be better for you; you could go less time and you wouldn't be working full-time and you wouldn't be so tired. He says no, I want to learn English here. I want to learn it right, I want to do well, and I want to graduate, and I want to earn my diploma. But he's 17. And so unless we allow him to remain after he's 21, that may not happen. And so I urge you to support this bill. I think it's valuable and I think it would go a long way in addressing some of the needs that schools have that have English language learners and the cost that is required for that. Thank you.

SENATOR RAIKES: Thank you. Questions? Yes, Senator Byars.

SENATOR BYARS: Just a comment because you elicited a response from me when you spoke to us in Spanish, and I recognized some of the numbers, some of the (inaudible), and a question more to the committee. If we have individuals who want to appear before this committee who do not speak

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English, let's say we have some of your students or someone, do we have translators or interpreters available to us?

SENATOR RAIKES: I'll have to research that. I don't...

SENATOR BYARS: I know we have sign, we have those can sign on the Health Committee and we do this from time to time. Do any of the other committees? Are we closing the door on people who speak another language? We can take this up at another time, but it just elicited a question in my mind. Thank you for making (inaudible).

SENATOR RAIKES: Point well-raised.

JAN KRACL: If you didn't understand, if you felt a little frustrated, that was kind of on purpose. That's what my students feel everyday.

SENATOR BYARS: Good. Thank you.

SENATOR RAIKES: Okay. Yes, Senator Stuhr.

SENATOR STUHR: Yes, Jan, you mentioned something about it would take maybe an average of seven years to work. Now, would that depend on the age of the student? Do you work more with high school students than the younger students?

JAN KRACL: I work only with high school students. And pretty much across the board research has shown that in order to compete equally, seven years is kind of an average, but particularly for students who are maybe from sixth grade on up.

SENATOR STUHR: Usually, they will say a younger student will grasp the language much faster.

JAN KRACL: Only because there's less information to learn at that age. The rate actually is about the same. But because there are less concepts and less words to learn in first grade as opposed to ninth grade, it seems like they're learning faster.

SENATOR STUHR: So of those 70, you said you have about 76 students right now, do you expect that most of them will be able to graduate or...? I mean, what are the expected

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expectations?

JAN KRACL: I hope so and many of them want to graduate. But we also have a very high mobility factor, so some students move before they graduate from our high school, and some of them just get discouraged and need to go to work. They need to start earning money, and so they drop.

SENATOR STUHR: Okay, thank you.

SENATOR RAIKES: Thank you again for being here today.

JAN KRACL: Thank you.

SENATOR RAIKES: Next proponent, LB 595. How many additional proponents do we have? Okay, two. Any opponents? Okay. Welcome.

NICOLE GOODMAN: Good afternoon, Mr. Senator and members of the board. My name is Nicole Goodman, N-i-c-o-l-e G-o-o-d-m-a-n. I'm a teacher from the Omaha Public Schools and I am at Liberty Elementary, and they assigned me to fifth grade but I say I teach all children because I have a variety of children from first grade to fifth, some maybe at sixth grade level. So I have...in my classroom I'm expected to meet a lot of different needs. I...because of all the different grade levels, I have to differentiate, which means I have to learn a lot of different strategies. Not only do I need to be able to teach the fifth grade curriculum, but sometimes I need to know how to go to the lower levels in order to accommodate and meet all of my children's needs. Some of the things that I...also it's not just about academics, it's not about a standardized test. And I agree with Mr. Kruse; it is a generational poverty. There's situational, there's generational. A lot of us probably have had situational, but there is a difference between situational poverty and generational poverty. And I really believe that it is our job as adults, as teachers, as leaders, to provide the best education for all kids, no matter what culture, what country they come from, because we have children here in our own country that are performing way below grade level that are not getting the basic needs that they need, from social to emotional. Some of the things that I have in my classroom, I am very fortunate to have a great principal and she supports low class sizes, so

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I have 16 students. But with my 16 students, I have four there on IEPs; I have six that are ESL, which two of the six are newcomers, which they've been here less than a year, and the other ones vary from third, fourth, and fifth grade levels. And I have students that come from abuse--socially, emotionally. I have children that their parents have been incarcerated since they've been two or three. They have no parents; they have grandparents that are their caregivers. So they are lacking support systems. And you talk about programs and showing...you know, sometimes I know that there needs to be...you want to see data, you want to see numbers, but sometimes it's kind of hard to show that, especially when you're on a daily basis and having to mark down every time a child acts out or a child cries. You have to meet those needs in order to get to the academic level and to give them kids a hope and a future. And sometimes in order to have those support systems, the dollars need to be used for a full-time nurse, for a food bank, to transport children to and from their counseling that they need to go a psychiatrist, or support because they've been abused, and those kinds of things. And also just contacting parents. We have to...plan time is not even a word to me anymore because during plan time you're dealing with the social-emotional needs of the children because of whatever happened to them that day or morning before they came to school--the struggles that they have. And you're going on home visits. You are sometimes even transporting them to and from their appointments. Going to...I had a student that got in some trouble, so you're to see him in the juvenile system because he doesn't have any support. And when someone doesn't have support, they lose hope. And so I believe that that's what our job is as teachers. And sometimes those things you can't always show...you know, you want programs that are a name or a number, but when you're in there everyday doing that, it gets overwhelming. But I know that it is important and I have to look beyond the fifth grader and look beyond his or her situation and know that they can be productive citizens, and that if we don't help them now we're just going to have to, unfortunately, use money later on to build, what, more prisons? And I don't think that's where we want these kids. So I just thank you for your time.

SENATOR RAIKES: Thank you, Nicole. Questions? You are officially a fifth grade teacher then; that's your job

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assignment?

NICOLE GOODMAN: Yes.

SENATOR RAIKES: But you teach primarily students... well, let me ask it this way. Your qualifications are a teacher, include the basic teacher certificate and then what other things?

NICOLE GOODMAN: I have my master's in administration. Is that what you're asking, or...?

SENATOR RAIKES: Okay. Well, that will work. So are you trained to deal with English language learner students?

NICOLE GOODMAN: Oh, yes. We are asked to get so many hours of training, which I have done through our district level at the district. And then at our school we try to provide as much training as possible. But, again, it's on a voluntary basis. So a lot of the times...

SENATOR RAIKES: The training is on a voluntary basis.

NICOLE GOODMAN: Yes.

SENATOR RAIKES: Okay. And you also are trained to work with special ed kids?

NICOLE GOODMAN: Yes.

SENATOR RAIKES: Okay.

NICOLE GOODMAN: We get a lot of help from our support teachers, and, again, it's about what I go out on my own, too, to learn to help meet the needs. And also in our school we talk about differentiated instruction a lot, and that's about meeting the needs of all the kids that we serve.

SENATOR RAIKES: Now...and I got the impression your classroom isn't comprised of the same students all day long; that they change from period to period, or am I wrong?

NICOLE GOODMAN: No, no, no. I have the same group of 16 students.

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SENATOR RAIKE: Okay.

NICOLE GOODMAN: We have an inclusion model. I meet in small groups. And, again, just because they're low in reading doesn't mean they're low in math, et cetera, so you really have to strategically plan on a daily basis.

SENATOR RAIKES: Now, what percentage of those 16 students would be English language learner or poverty students, or both?

NICOLE GOODMAN: I have about 40 percent in my classroom right now.

SENATOR RAIKES: Okay. Okay. All right. I see no other questions. Thanks again for being here.

NICOLE GOODMAN: Thank you.

NANCY OBERST: Good afternoon. My name is Nancy Oberst. It's spelled O-b-e-r-s-t. I'm principal at Liberty Elementary which is an Omaha Public School, and it's located on 20th and St. Mary's. I come here today in support of the bill, LB 595, for many reasons. And so I just want to describe to you my school and talk to you a little bit about what I've learned since 1975 when I started working for the Omaha Public Schools. The children who come to Liberty, and there are now close to 600 of them, range in age from 4 to about 13. They are students that are served in prekindergarten rooms through the sixth grade. We have the advantage of having some smaller class sizes within our district, although our kindergarten classes are larger than they should be. This year they have 20 students in them; we would prefer that they have 15. But we have 100 kindergarteners. We're in a neighborhood where you cannot always predict the number of students that will come to your door. Demographically, we have mostly apartments and rental property. Our poverty level is better than 80 percent. Our ESL population is 62 percent. The difficulty we have in knowing who is coming and who will stay is very much dependent on the poverty and the conditions that families bring to our door. Many of our students live in situations that would be very different than those my children lived in. They live in one-bedroom

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apartments; perhaps ten people live in their apartment. When I first came to the inner city, I remember saying to a student, what does your mom do when you do this? Do you have to go to your room? And he looked at me, and he said, my room? And then I thought about it for a minute and I realized he doesn't have his own bedroom. I'm talking about a middle-class situation where a student is isolated for an hour of the evening because he misbehaved. But what we have are children who may...many don't have a bed; many don't have dressers. It's difficult to find your shoes or your hat or your coat when you live in an apartment with so many people. On a given day at Liberty, students start arriving around 7:15. This could be a five-year-old. Sometimes they...and one of the...I actually pay a teacher to sit with students on the steps--we call them stair teachers. Mrs. Goodman is one of those. And what they do is they sit with the children; actually they talk with them, entertain them, visit with them about what they'll be doing because they come to school when moms and dads leave for work and lock the apartment doors. They walk. The come on their own. They don't really know what time it is. It's dark, and they know that they can...once they get to the front door, they're inside and they're waiting. We serve breakfast at 8:20, and so sometimes they've been sitting for an hour. But it's a way that we feel we can keep them safe, we can keep them supervised, and the truth is, is that the teacher who is being paid \$22 an hour is doing us all a huge service. We do have before- and after-school programming. It is free to our children and it's done through foundations and agencies such as Campfire U.S.A. I do have a full-time nurse in my building. I use various monies that the district allows me to, to fund that position. Typically, it would be a three, a two and a half-day a week position. But when I first came to the neighborhood I'm currently in, I found that we had students coming to school who do have asthma but who share inhalers with other family members and may come to school without one. The first time I called 911 over an inhaler, I decided I had to start thinking out of the box and do things a bit differently. So I am here today to say to all of you that we have a lot of beautiful children at Liberty, and their needs are unique, but their families are not turning their backs on them. They are over-employed. Most of our parents work more than one job. Most of them are not legal. But they love their children just like all of us. And we want to do best for their kids

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because someday those of us that are my age and older know we'll be in a nursing home and you better hope they can read. Thank you.

SENATOR RAIKES: Thank you. Questions for Nancy? Well, thank you. I knew I recognized you from some place. We ran into each other, I think, at a Gallup event.

NANCY OBERST: Oh, yes.

SENATOR RAIKES: Yeah, and I remember your saying there that you were, in fact, very pleased with the progress of your students. You thought the achievement levels were good. I remember your mentioning the parent involvement was good, so situations aren't always great but you had a positive feeling about the achievement of the school.

NANCY OBERST: I do. I would say to that that we are...you know, we made our mark this year with state standards and our own CRTs. The difficulty, of course, is with No Child Left Behind and the 8 percent increase in those tests each year. So, yes, our children are learning and they are going very well. The rate at which we can continue that progress is my concern.

SENATOR RAIKES: Okay. One other question and this may be something you can't answer and, if so, just say so. But the funding for your building, given the number of students and other standard measurements as compared to other buildings, similar buildings, I mean in terms of number of students and so on, how would you...what is the funding level?

NANCY OBERST: Well, our district uses a weighted system for students also, and so I do receive funds that the district can allow us to receive to staff our building. But I also, in terms of special programming, tutoring, our clothing bank, food sources for families that are out of food, families whose utilities have been cut off, or they've been evicted, or in the case of when parents are incarcerated and we need lodging or transportation for their children, those kinds of things are not met by district funds and those are the kinds of things that we need to keep kids in school. So the basic educational needs, we're doing pretty well at, but it's all the other pieces that are needed to really support the success of my students.

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SENATOR RAIKES: Okay. Thank you again for being here.

NANCY OBERST: Thank you.

SENATOR RAIKES: Next proponent, LB 595.

DUANE OBERMIER: Senator Raikes, members of the Education Committee, my name is Duane Obermier, first name D-u-a-n-e, the last name O-b-e-r-m-i-e-r, and I have the privilege of serving as president of the Nebraska State Education Association. But I was also a classroom teacher. I was a classroom teacher for 33 years. Most of those years, 31 of them, at Grand Island High School, and I can echo many of the comments you've just heard from these folks who are working with students on an everyday basis. I, of course, haven't done that for a few years, being president of the NSEA. But I can assure you that the challenge of working with students in poverty and the challenge of working with English language learners is very real, and the word challenge is indeed the case. In my situation I worked with many Spanish-speaking students who were new to Grand Island, and the word challenge really fits. I don't want to take much time today. I simply want to let you members of the committee and, hopefully, the whole Legislature, know that the NSEA is indeed in support of LB 595 and that it is our purpose here to urge you to vote to send the bill to the full Legislature for debate on the floor.

SENATOR RAIKES: Okay, thank you, Duane. Senator Kopplin.

SENATOR KOPPLIN: NSEA supports this bill, including the shift of \$40 million from various schools to other various schools?

DUANE OBERMIER: NSEA supports having people in schools, administrators and teachers having the materials that they need to work with students. It would not be our preference that the funds are shifted from one school to another. We don't want winners and losers; we want simply to have schools have the materials, supplies, and expertise that they need to work with students. And so we would hope that particular problem could be worked out.

SENATOR RAIKES: Okay, thank you, Duane.

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DUANE OBERMIER: Thank you.

SENATOR RAIKES: Any other proponents, LB 595? If not, opponents, LB 595? Neutral testimony, LB 595? Senator Kruse, your turn.

SENATOR KRUSE: Thank you. First, I know I speak for all of us when I express my appreciation to these teachers and principals and what they do, and you can see why I didn't want to leave. One additional comment, going back to Dr. Pool's comments and your question of him about a program that would apply to all the students. It occurred to me that if that program were not offered except to a school with low income, then the number of persons who are benefited on the side because they could also use tutoring but are not low income, is a side point or a moot point. If the total school district says, because we have such a high percentage of persons, we have 40 percent, we have to offer this additional program, the total program, it would seem to me, the total offering. Now, I recognize that's not an easy thing to calculate, but if a...to take as a simple way, if the school said we've got this challenge and it's putting a load on each of our teachers and therefore we're going to reduce our class size from 20 to 15, I would submit that that's a cost of low-income ELL and not a cost of normal doing of business. So just that thought.

SENATOR RAIKES: Thank you.

SENATOR KRUSE: The Lord bless you all real good.

SENATOR RAIKES: Thank you; we might need it. Okay, that will close the hearing on LB 595 and we will move to LB 616 and Senator Howard.

LB 616

SENATOR HOWARD: Coming from my previous discipline, I'm always tempted to say, thank you, your honor. Gwen Howard, that's H-o-w-a-r-d. I have introduced LB 616 so that the Omaha Public Schools can begin to address a problem they are facing with our state special education reimbursements. It is an issue that we may also want to address to ensure that

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our reimbursement process is not in conflict with federal funding requirements. LB 616 would revise Nebraska special education reimbursements to align it with federal law by eliminating differences in reimbursement based on the educational setting in which a child with special education needs is served, whether that be in the regular classroom or in a special education classroom. The point is to ensure that the individual child's needs are being met. What works for one child may not be the educational environment that works for another. This is a balance that must be worked out, student by student. The individual needs of the special education child is recognized under the federal Individuals with Disabilities Education Improvement Act of 2004, a very long title. IDEA promotes inclusion of special education students into the regular classroom setting whenever appropriate. But IDEA also promotes provision of a free and appropriate education that meets the unique needs of each student. And IDEA now prohibits financial penalization of schools seeking to provide a free and appropriate education through multiple and diverse settings. It specifically adds the requirement that state funding mechanisms cannot distribute funds on the basis of the type of setting in which a child is served, if doing so will result in a provision of an education that doesn't meet the unique needs of the child. Currently, Nebraska's funding mechanism does distribute funds on the basis of setting, providing significantly less reimbursement to school districts with a disproportionate number of students who need more than three hours a week of special services outside the classroom. If an individual education plan for a child calls for service outside of the regular classroom setting, IDEA says the funding system should not discriminate on the basis of the type of setting in which the child is served. Nebraska's differences in reimbursement are very significant. For example, Lincoln Public Schools serves approximately 800 high or higher-need students, while Omaha Public Schools serves approximately 2,030 higher-need students, yet LPS and OPS had nearly identical allowable special education costs for which they were reimbursed. So in order for Nebraska to continue to receive federal fundings for special education, the IDEA requires states to align with the federal requirements. LB 616 aligns Nebraska law with a new authorization of IDEA by prohibiting discrimination on the basis of the type of setting in which children are served, whether they're in the

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regular classroom in special classes or in special schools. Our special education students cannot thrive in a one-size-fits-all environment. They need education plans that recognize their uniqueness. LB 616 ensures that these students' needs are not subverted due to a reimbursement process that does not reflect our commitment to the individual needs of the student. Thank you.

SENATOR RAIKES: Thank you, Senator. Questions? Senator Byars.

SENATOR HOWARD: Yes, sir.

SENATOR BYARS: Senator Howard, could you talk a little bit about the different settings? I think probably there would be some confusion on what settings are, and could you elaborate on that?

SENATOR HOWARD: That's an excellent question and I will go from my understanding of the matter, which is that in Lincoln Public Schools, children are served in their classroom and their homeroom, if it would be with a para that is with them, that accompanies them. While in Omaha Public Schools, they're removed from that home base classroom setting and served in another setting outside that room.

SENATOR BYARS: In other words, they would be served in a setting that would be not inclusive.

SENATOR HOWARD: Yes, that is my understanding.

SENATOR BYARS: Okay. That troubles me. Thank you very much.

SENATOR RAIKES: Senator, if I could follow up, would that mean...well, and again I'll throw this out. If you don't know the answer, I don't either. If you took a student on an IDEA program that, you know, two students that required similar services, would, under the two settings, the one in Omaha and the one in Lincoln, as examples, would the cost...is the problem that the cost is higher in the Omaha one? Is that the reason that we've got this difference? Or what is the reason?

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SENATOR HOWARD: Senator Raikes, I appreciate that question. I think what, if you will allow me to leave that question for the folks that are going to be testifying after me who will be better able to give you the answer.

SENATOR RAIKES: Absolutely. Okay, any other? Well, I assume you'll stick around, Senator.

SENATOR HOWARD: I will, sir; I will. Thank you.

SENATOR RAIKES: Good, good, okay. We'll turn to proponents now for LB 616. Welcome.

JULIA ALLEN: Good afternoon. My name is Julia Allen, last name is spelled A-l-l-e-n, and I am the director of special education for Omaha Public Schools. Omaha Public Schools supports LB 616 for two reasons. We believe it aligns Nebraska with the new authorization of the Individuals with Disabilities Education Act, and it eliminates discrimination based upon the setting which services are provided to students that are part of Nebraska's special ed funding formula. Let me tell you about special education in the Omaha Public Schools. During a given school year, we serve over 9,000 students with special needs. Over 6,000 of those students are what Nebraska terms Level II students. And these 6,000 students represent the number that Senator Howard mentioned earlier, the 2,000, she mentioned 2,000 students. It's actually 2,000 full-time equivalency students. So those 6,000 students are integrated throughout the school day and represent only 2,000 student FTE, which is a significant difference. Those Level II students are students who need more than three hours per week of special education services and who receive it in the school district in a variety of settings, some of them regular classroom, some in a separate classroom and for different amounts of time throughout the school day. Nebraska's current system of reimbursement discriminates against these children because Nebraska reduces reimbursable costs for Level II students. Presumably, the reason behind this is that if a student isn't in one classroom but another for part of the day, then the cost for providing his regular education services are reduced, and this is not true. A child in the regular classroom five days a week, all but for one hour a day, doesn't reduce any costs. His regular teacher is still there, his desk is still there, his books are still there

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during the time that he is removed for any special instruction. Every child receiving special education services has an IEP that designs his programs and services to assure that he will receive a free appropriate public education. Best practices teach us that whenever possible we want to provide those services to the greatest extent possible in the regular classroom. I agree strongly with this premise. But we also know that it is not always educationally appropriate to require a child with disabilities to receive the curriculum in the same classroom. These decisions are made by the IEP team, which consists of this child's students and parent. Let me give you an example. A child with a reading disability may need curriculum in reading that is different than what is being used in the regular classroom. His IEP has outlined this. So this child may gather with other students in the building who have similar reading needs, and while their peers may be in a reading class in the regular classroom, they will focus on some intensive remedial instruction specifically designed for their needs. They may leave for a short period of time. We believe these children require a teacher to teach them and not a paraprofessional to support them in the regular classroom. Currently, the time that a para would spend with a student in the regular classroom does not contribute to a reduction of allowable special education costs. But the time the teacher providing the remedial instruction would contribute to a reduction in reimbursable costs. Last year, Omaha Public Schools lost a full 20 percent, over \$7 million of what otherwise were considered reimbursable special educational expenses. Why? Because of the efficient manner in which we were meeting children's IEPs to provide a free, appropriate public education. In essence, while the state average for reimbursement for special ed allowable costs was about 62 percent, Omaha Public Schools only received 42 percent of the cost of providing a free and appropriate public education to our students. Where does OPS get the other 58 percent needed to cover our costs? From the general fund budget, which has been cut, while general education in OPS costs rise, in part to the growing number of students in poverty and our ELL population. IDEA offers a solution and we should comply with federal law in terms of our funding. LB 616 puts Nebraska in compliance with IDEA and prohibits discrimination based on the type of setting in which children are served, whether it's the regular classroom, special class, or a separate school. In

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doing so, it eliminates discrimination based on a child's disability that isn't currently incorporated in Nebraska's funding of special education. And I urge you to advance LB 616. Thank you.

SENATOR RAIKES: Okay, thank you. Questions? Senator Kopplin.

SENATOR KOPPLIN: Yes, I'm not quite understanding everything, but this is what I think you're saying. In the Lincoln Public Schools where they use a paraprofessional, the students are classified as Level I. And in Omaha where you use a classroom, they're Level II, which means that you've got to meet certain per-pupil costs before you get the reimbursement. Is that what this is about?

JULIA ALLEN: Well, I wouldn't presume to describe Lincoln's service delivery, but I know that in Nebraska rule right now, in classroom services provided to students who are in the same curriculum as other students does not contribute to the deduction districts have to take before submitting their allowable costs for reimbursement, but providing services in a separate setting does.

SENATOR KOPPLIN: Okay, I think it would be on time, but I'm not sure on that. And I was interested in the percentages you gave, 62 percent statewide, which in itself is how many percentage less than what the special ed legislation called for?

JULIA ALLEN: Yes, as the cap on special education reimbursement was in place and costs...

SENATOR KOPPLIN: Okay, but when they started, it was at like 90 percent for Level Is, and so on.

JULIA ALLEN: Ninety, yes. Um-hum.

SENATOR KOPPLIN: So we've really gone from 90 percent to 62 percent for all special ed programs. And in your case, you're saying it's lower than that.

JULIA ALLEN: In the state average was 62, Omaha Public Schools received 42 percent because of the deduction.

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SENATOR RAIKES: Senator Byars.

SENATOR BYARS: Yes, thank you, Senator Raikes. Thank you very much. I appreciate all the hard work that you do. I think the language is fairly simple as far as what's being asked for in the legislation. A question I would have as I look at the fiscal note, I'm not understanding because you're talking about significant amounts of general fund dollars from your school district that are involved because this...because of the way that you're providing services. And I know every school district is struggling with appropriate funding for special ed, but I'm not seeing any kind of impact in our fiscal note. It shows, as far as the state is concerned anyway, there's not going to be any fiscal impact. And I'm not understanding that. Maybe I need to ask someone else, you know, because it would seem to me that there would be a...could be a significant fiscal impact on the school district.

JULIA ALLEN: We, for example, we don't know how it would affect our school district until we could see what the state level of reimbursement would be. I'm sure some districts would be negatively impacted, and some positively impacted.

SENATOR BYARS: Because all you're asking is to comply with IDEA, the federal requirements.

JULIA ALLEN: IDEA. Yes.

SENATOR BYARS: And I'm not saying anything any different am I?

JULIE ALLEN: Correct.

SENATOR BYARS: Okay, thank you very much.

SENATOR RAIKES: Senator Stuhr, do you have a question?

SENATOR STUHR: I did have. I too want to thank you for your service. Actually it's up to each school district and the type of setting that they wish to provide.

JULIA ALLEN: Actually it's determined by the child's IEP team. And the IEP team consists of a district representative, and the child's teacher or teachers, and

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providers, and the parent. And then what is determined to be necessary for that child to receive a free, appropriate public education, then determines the services and programs that he or she will receive.

SENATOR STUHR: Right, but still basically it's up to the district. I realize that you have the plan, but...

JULIA ALLEN: Um-hum.

SENATOR STUHR: ...if you choose a different setting, I mean, the district has that right.

JULIA ALLEN: We provide a variety, a range of settings; that's correct. Yes, um-hum.

SENATOR RAIKES: Is the key thing here this deduction?

JULIA ALLEN: Yes.

SENATOR RAIKES: All right, so explain to me how the deduction works.

JULIE ALLEN: Well, I could try. I don't know if someone might be better equipped to do that. I can tell you in my own words.

SENATOR RAIKES: But, you know...all right, sure. Let's start there. It may take a couple of rounds for me to figure it out.

JULIA ALLEN: In the final financial claim that districts submit to request their reimbursement, you are at Level II and III full-time equivalency student time, is multiplied by your adjusted per pupil cost that the state gives you, and then that results in a deduction in your operating expenses that is made, and then the remainder is what is eligible for reimbursement at some level from the state.

SENATOR RAIKES: And so your point or position is, that because of the way you handle your special ed programming in OPS, you end up with more FTE student hours being multiplied by that cost group cost, and therefore deducted.

JULIA ALLEN: Um-hum. Regardless of how a district handles

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theirs, you shouldn't be penalized for the setting in which the student receives the services.

SENATOR RAIKES: And the setting, again, is, it doesn't have to do with Level II or Level III. That has to do with the IEP plans?

JULIA ALLEN: Yes.

SENATOR RAIKES: The setting has to do with whether you use a trained person in the classroom or if you take the students out of the classroom and...

JULIA ALLEN: Um-hum. Well, the setting is specified in current Rule 51. And any service that is provided to a student outside the regular classroom setting counts in your deduction.

SENATOR RAIKES: Okay. Would that be a stimulus for inclusion? Is that, I mean, I'm guessing as to why something like that might be there.

JULIA ALLEN: Um-hum. Well, 75 percent of our students receive all their services in their neighborhood school in their regular classroom. It's a small percentage, but they are our higher-need students that we provide some...

SENATOR RAIKES: Okay, and it's this small percentage that you're worried about here.

JULIA ALLEN: Yes.

SENATOR RAIKES: This is the deduction, folks.

JULIA ALLEN: Well, it's a \$7 million deduction, for example, for us last year.

SENATOR RAIKES: Okay, getting a little closer. Any other questions? Senator Byars has one more.

SENATOR BYARS: I just want to eliminate one assurance as the director of special education. I'm certain you and your staff do everything you possibly can to make certain students are included wherever possible, correct?

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JULIA ALLEN: Everyday.

SENATOR RAIKES: Okay, thank you again for being here. Next proponent, LB 616.

D'ANNE WELCH: My name is D'Anne Welch. It's spelled D-'-A-n-n-e. Welch is with a c. I didn't understand until I just heard at the hearing what was the purpose of this bill, but I did want to come and testify about the need for special education funding. As you know, the Governor's budget proposal has a zero percent growth over the next biennium. That was proposed by the Governor two years ago, and at that time I did check with the U.S. Department of Ed, which I did again at this budget proposal, and I'm being told that you can't do that under IDEA. I think funding for special ed is the big elephant in the room that we're not talking about, whether it's Level I, II, or III, I don't...you know, I don't care. I think we need to have adequate funding for all of the children. My child at the J.P. Lord School in OPS doesn't experience this kind of a dilemma because every dime spent at that school is for special ed. It's pretty easy to account for, and, you know, there's no illusion that we're going to include these children. They can't successfully be included. Maybe that's where we went wrong in Nebraska back in 1995 when we put the cap on special education spending. Inclusion, this probably doesn't work, but here we are today. We have to do something about the state funding, the state level of funding. And, you know, I just think it's important that that testimony be included with this new federal IDEA requirement. Thank you.

SENATOR RAIKES: Okay, thank you, D'Anne. Questions? Thank you. Other proponents, LB 616. How many additional proponents? Okay.

KORBY GILBERTSON: (Exhibit 3) Good afternoon, Chairman Raikes, members of the committee. For the record, my name is Korby Gilbertson, spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of Girls and Boys Town in support of LB 616. Girls and Boys Town supports LB 616 because they support providing those services and reimbursements to providers that are fair and equitable, in order to provide students with the best possible education. And I also have a letter from Mr. Pat

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Connell, who's also the president of the Nebraska Association of Homes and Services for Children in support of the bill that he asked me to make a part of the record. I'll pass that around.

SENATOR RAIKES: Thank you. Questions? Yes, Senator McDonald.

SENATOR McDONALD: Mine's just happy birthday.

KORBY GILBERTSON: Oh, thank you.

SENATOR RAIKES: Ah, no, no. So Girls and Boys Town, they receive special education services, or what, are funded through public schools?

KORBY GILBERTSON: I don't know, I don't think that their payments were made through the public schools. Is that...I don't think so.

SENATOR RAIKES: Well, I'm looking for advice here. But my understanding was that public schools are the route through which special educational funding is directed.

KORBY GILBERTSON: And I'm not sure. Maybe Brian...(inaudible)..., Brian do you know? I don't know. I'm not sure.

SENATOR RAIKES: Well, in particular, what would be the interest of Girls and Boys Town in this particular proposal?

KORBY GILBERTSON: Their specific instructions to me were at literally at one o'clock this afternoon. They are not sure of the actual impact on Girls or Boys Town. And that's why in my testimony I specifically said that they're in support of giving children the education and reimbursing for the equitable or doing the equitable reimbursement for rates.

SENATOR RAIKES: Okay.

KORBY GILBERTSON: Because we obviously have other rate issues that will be before the committee at other times.

SENATOR RAIKES: Oh, I didn't know about that, so. Okay, thank you. No other questions? Thank you, Korby.

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KORBY GILBERTSON: Thank you.

SENATOR RAIKES: Any other...yes, we have one more proponent.

DUANE OBERMIER: Senator Raikes, members of the Education Committee, again, my name is Duane Obermier, D-u-a-n-e O-b-e-r-m-i-e-r, and I am here to indicate Nebraska State Education Association's support of LB 616. And, again, I'm...I guess I'm trying to set a record for brevity. We simply believe that it would be good public policy to have this in our statutes.

SENATOR RAIKES: Okay, thank you, Duane. You're doing well on your record-setting effort. Any other questions? I see none. Thank you.

DUANE OBERMIER: Thank you.

SENATOR RAIKES: Any other proponents, LB 616? How about opponents, LB 616? Neutral testimony?

BRIAN HALSTEAD: Good afternoon, Senator Raikes and members of the Education Committee. For the record, my name is Brian Halstead. Brian is B-r-i-a-n, Halstead is H-a-l-s-t-e-a-d. I am with the department here in a neutral capacity. Currently, the state of Nebraska funds special education based on the amount of time that is spent working with special education students. As you can look in the bill, you'll see the Level I services at the top of the statute that's being amended. It talks about three or less hours, and I think Senator Kopplin actually had it correct. That's how it's done, based on the amount of time. Obviously, there may be some dispute as to how you calculate the adjusted average per pupil cost that needs to be taken out of it, which appears to be some of the issue in this one. But I thought I'd just make it clear for the record that it's not based on the setting, but it's on the amount of time that Nebraska, in fact, reimburses for special ed. That's been in place for a number of years. The U.S. Department of Education has had in place for a number of years regulations that are very similar to the language that's now been codified in No Child...or excuse me, in the reauthorization of IDEA. So they've moved the language from

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regulation, basically, into the U.S. code. But our reimbursement plan has always been approved by the U.S. Department of Education without any questions. So I hope that brings some clarity to the subject and I'll try to answer any questions if there are any.

SENATOR RAIKES: Senator Kopplin.

SENATOR KOPPLIN: Thank you. What was bothering me a little bit was how this thing was discriminatory. I don't see that, beings you have to get approval from the federal government. So while I agree with what many of these people are saying, I don't see it as discriminatory. Could many of these issues be resolved if we did indeed fund special education at 90 percent?

BRIAN HALSTEAD: I would suspect the higher the funding level is probably going to bring greater satisfaction to all that are providing the services, Senator. I can't imagine that more money is not going to solve some of the problems, but I don't know that it's going to solve all of the problems. But that might be a great question for the proponents.

SENATOR KOPPLIN: And...can I ask another question?

SENATOR RAIKES: Sure, go ahead.

SENATOR KOPPLIN: With regard to the Boys and Girls Town, I think school districts are indeed responsible for the special education costs, are they not, if they contract with them?

BRIAN HALSTEAD: That could be the case. I was having a staff member check to see whether or not Girls and Boys Town may not be a special provider who has special rates set by the Nebraska Department of Education. So in some instances that may be their concern in that regard, but we don't believe that the current funding mechanism we use discriminates in any manner, shape, or form. But obviously if it had, we would assume the U.S. Department of Education would have noticed years ago when they approved our plan.

SENATOR RAIKES: Brian, and then if you would respond to what I interpreted as a belief that students that are taken

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out of the classroom to receive services are somehow funded at a lower reimbursement rate than ones that remain in the classroom.

BRIAN HALSTEAD: You want me to...?

SENATOR RAIKES: That's not the case? Yeah, you have to answer. You're on the hot seat here.

BRIAN HALSTEAD: And here's the best way I'm going to be answering that question, Senator, is I can't explain fully the mechanisms that are used to calculate the costs for special ed for Level II and Level III. That's beyond my capability.

SENATOR RAIKES: Level II and Level III would be those students who typically receive more than three hours...

BRIAN HALSTEAD: Correct, in the sense of more than three hours for Level II, and I can't tell you that exact criteria that moves you into Level III. That may actually be a separate setting. But I can't tell you the exact...

SENATOR RAIKES: Would there be any policy notion or notion behind the rules that would provide less reimbursement for kids taken out of the classroom or not included, if you will, as a stimulus to have all the kids included in the classroom?

BRIAN HALSTEAD: Well, I suspect Senator Byars' comment about it may be an incentive to get the kids back into the regular classroom instead of a separate setting may be one of the policy issues that is behind that, sure. I think also, you, I think you...

SENATOR RAIKES: But if that is the case, then, in fact, you're saying it may be that there is a lower rate of reimbursement for kids outside of the regular classroom?

BRIAN HALSTEAD: I don't know that it's a lower rate, Senator. I suspect some of that may be how you calculate what the...

SENATOR RAIKES: The deduction (inaudible) issue...

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BRIAN HALSTEAD: ...average adjusted per pupil cost is for that student if they were in the regular classroom, or what would be that responsibility of the school district. But, again, that's beyond my knowledge of how special ed is done and how the reimbursement rate is calculated. If the committee needs more information, I'm sure Mr. Sherman who heads our special populations office can give you a more detailed analysis of how we calculate the Level II and the Level III rates.

SENATOR RAIKES: Sounds like a good idea, but I think Senator Kopplin has got the answer for us here.

SENATOR KOPPLIN: No, I don't have an answer. I'll ask a question that maybe...as I understand it, a Level III student is outside of the regular classroom all the time. So the school district, I believe, and correct me if this is wrong, still has to be responsible for that per pupil cost of that child going to that school. Everything else that that Level III classroom costs above that is reimbursed, and I don't know the percentages anymore. It used to be 90 percent, but, you know. A Level II student is out of the classroom maybe only half of the time. So the school district has to be responsible for one-half of that per student calculation and then they get their reimbursement. It's not a different rate. Did I step out of line? I'm sorry.

SENATOR RAIKES: No, not at all.

BRIAN HALSTEAD: I think you answered my question, his question by me very well. I think that's how it's still done.

SENATOR RAIKES: Okay. Well, thank you then, Senator. Any other questions for...? I will take you up on your offer to provide information from whoever has expertise.

BRIAN HALSTEAD: And I will see that you, that the committee gets it.

SENATOR RAIKES: Yes.

BRIAN HALSTEAD: Absolutely.

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SENATOR RAIKES: Okay. All right. Any other neutral testimony? Okay, well, Senator Howard, would you like to close?

SENATOR HOWARD: I'd like to thank you for your attention to this matter. And in closing, I would wish to stress that this quest, this bill was based on considering the individual needs of the student and how we can best serve each of the students that comes to us within the system, and I say us in terms of all of us. So thank you very much.

SENATOR RAIKES: Thank you, Senator. Questions? Okay, that will close the hearing on LB 616. And Senator Byars.

LB 634

SENATOR BYARS: We will open the hearing on LB 634. Senator Raikes, welcome to the Nebraska Unicameral's legislation, Education Committee.

SENATOR RAIKES: Well, thank you. That's the first time I've ever been welcomed. I appreciate that.

SENATOR SCHROCK: That doesn't necessarily represent the sentiments of all of us.

SENATOR RAIKES: You want to vote on it, do you? Senator Byars, esteemed members of the Education Committee, and Senator Schrock too, Ron Raikes, District 25, here to introduce LB 634. This deals with the obligation of schools to provide either transportation or a transportation allowance to students. And this began really in trying to deal with an equity issue. Currently, Class VI school systems are not under any obligation to provide transportation for high school students. Class III systems, which are the K-12's that look most like Class VI, are. So it seemed like an equity issue to have a Class III student on one side of the highway that was entitled to transportation reimbursement for going to high school, whereas as a Class VI student on the other side of the highway was not. So, in LB 126, we resolved the equity issue by making the, well, the soon-to-be Class III student that is now a Class VI student, eligible for the high school transportation allowance. This approaches the equity issue

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from the other direction. That is, you can either address the equity issue by making sure that everyone is entitled to high school transportation expenses, or you can go the other direction and say, no one is. And that's the direction that this bill goes. So let me remind you that our current statute regarding transportation, all K-8 students that are more than four miles from the school district are to be provided either transportation or a transportation allowance. Now, of course, this would not apply for, at least in terms of a mandate for option students, but certainly school districts are allowed to provide the transportation for those students if they choose. Currently, for 9-12, Class II and III systems, K-12 systems, are required to provide 9-12 transportation or allowance unless they were formed from a Class VI system. It's a little paren. in the statute. Class IV, there is no requirement for high school transportation. And, as you know, all Class IV systems include Lincoln Public Schools. Class V, there is a transportation requirement for ninth grade students, but not the rest of high school. Under this bill, it's varied. Under this bill, K-8 would remain unchanged so that all K-8 students that are more than four miles would be entitled to either transportation or a transportation allowance. For Classes II through VI, there would be no requirement for 9-12 transportation. So it would impact Class II systems, Class III systems, and Class V systems. Now keep in mind, none of this says that you cannot provide transportation or an transportation allowance. It simply says that it is not required, so you may not if you choose not. So, likely, you would have a number of school systems that had been providing transportation services for high school students and would continue to do so. Others would not; others may stop. Now, take a look at the fiscal note. The fiscal note, I think, is understandably vague on what this would do for costs. But a few comments on that. I think there's a number in there, something to the effect that there would be...that about \$46 million are spent on transportation or transportation allowances currently. This certainly does not...that would include not only the K-8 which would remain in effect, but it would also include currently what is being done for 9-12. As they point, I think correctly, in that note, it would be hard to tell exactly what the total fiscal impact on the state would be because it would depend on the decisions of local school systems, what they might be able

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to do in terms of reducing route miles, and some of those kinds of things. I would also remind you that, currently, transportation allowance is an individualized factor in the needs calculation in the state aid formula. So if a school system is equalized, then transportation expense is reimbursed by the state. As I say that, I will remind you that all of those needs calculations, not all of them, but in the main they're based on two-year-old data. So if you had a situation, ...and if there's someone here that finds this wrong and would like to correct it, I would welcome it...if you had a school system that for one reason or another decided to do it, they could eliminate transportation expenditures, but still in terms of their state aid calculation, get the transportation allowance for an additional two years before it shows up finally in the actual aid calculation. Again, just referring to the fact that it's two-year-old data that are used to calculate needs. So, again, this deals with an equity issue. The net impact would be that there would be uniformity across classes of school districts. K-8, there would be a requirement that if you're a K-8 student and four or more miles from the school, you would be provided either transportation or an allowance to cover the transportation. Nine through twelve students, there would be no requirement. So if the school system that you happened to be dealing with decided to provide that, that would be available to you; if not, it would not be available to you. So with that, I'll stop and offer to address questions.

SENATOR BYARS: Thank you, Senator Raikes. Senator Schrock.

SENATOR SCHROCK: Did you say nonequalized school districts don't get transportation reimbursement?

SENATOR RAIKES: Everybody, all school systems in the...in the needs calculation, there is an individualized transportation allowance. So, yes. When you're calculating the needs for a nonequalized system, there is transportation in there. But if the resources exceed needs, as is in the case with a nonequalized system by definition, then the state doesn't pay for it because, in effect, there's enough local resources to cover the whole needs requirement.

SENATOR BYARS: Senator McDonald.

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SENATOR McDONALD: So in an equalized district that does do transportation, even though it's not required, is that part of their needs?

SENATOR RAIKES: Um-hum, um-hum. Yes, um-hum, yes, yes. Yes, it would. And, again, it's using two-year-old data.

SENATOR BYARS: Any other questions for Senator Raikes? Thank you, Senator. Proponents? Any proponents?

SENATOR SCHROCK: Last time he was up here, we broke his arm.

SENATOR HOWARD: He's come back.

SENATOR BYARS: I think he's feeling much better today, I can tell.

MEL CROWE: Senator Byars, Senator Raikes, and members of the Education Committee, my name is Mel Crowe, spelled M-e-l C-r-o-w-e. I'm superintendent of Adams Central Junior-Senior High School and I'm here in support of LB 634. As a side note, I am pleased to inform you that, although my arm is still in a sling, I did discontinue the pain pills after my testimony last Monday. (Laughter) As written, LB 634 would eliminate the transportation exemption provided for converted Class VI districts. However, it would also eliminate the requirement to provide transportation for students in grades 9-12. Therefore, this bill would cause no apparent change in transportation requirements for Class VI districts. Adams Central, as a Class VI district, is by law now not required to provide transportation for students in grades 9-12. If, due to LB 126, Adams Central is forced to become a Class III district, it would continue to be exempt from providing transportation for students in grades 9-12 as specified under current statutes. While this seems to the benefit of Adams Central and other Class VI districts, it is problematic and one of three reasons why I'm here to testify in support of LB 634. The first reason of these reasons is that I believe all Class II and III districts should operate under the same set of rules. As I stated previously, current statute specifies that Class VI districts which become Class II or III districts will continue to be exempt from providing transportation for the 9-12 students. This is obviously unfair to current II and III districts, all of

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whom are required to provide this transportation. This unfair application of law brings me to my second reason for testifying on behalf of LB 634. I believe that if challenged through the court system, it would be difficult to defend any position other than that laid out by LB 634. Finally, I'm testifying in support of LB 634 because the requirement to transport students is costly, not only for school districts, but also for the state. Additional costs for Adams Central, for example, would be approximately \$150,000 per year. Thank you.

SENATOR BYARS: Thank you, Mr. Crowe. Any questions?

SENATOR RAIKES: Do you have any of those pain pills left? When you talked about forcing that class or going to Class 3, that's kind of a pain.

MEL CROWE: I do have a lot of them left but I'm not going to take them anymore. (Laughter)

SENATOR BYARS: Thank you. Other proponents? Any opponents? Any opponents? Anyone testifying neutral? If not, Senator Raikes, do you wish to close?

SENATOR RAIKES: I don't.

SENATOR BYARS: Senator Raikes waives closing. That will close the hearing on LB 634.

SENATOR RAIKES: Thank you, Senator. We'll now move to LB 704, and our own Senator McDonald. This is kind of an in-house deal today, isn't it?

LB 704

SENATOR McDONALD: Chairman Raikes and members of the Education Committee, I'm Senator Vickie McDonald, representing the 41st Legislative District, and I'm not on pain pills, though this sounds like it's going to be a confusing bill; it's not. LB 704 isn't a complicated bill, but it proposed to amend a complicated portion of our state aid formula. LB 704 excludes net option funding received for converted contract option students from a school's resources used to calculate stabilization aid. For those of

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you who have been members of this committee for four years or more, the saga of Grand Island Northwest, its affiliated Class I schools in the Grand Island Public Schools is familiar to you. For those of you that are new on this committee, it is to say that the relationship between these two school systems has had its ups and downs over the last 40 years. For many years, Grand Island Public Schools had a contract with Northwest and paid tuition for its students to attend Northwest. When the contract expired after the 2003-04 school year, the Grand Island students attending Northwest became converted contract option students. The Legislature tweaked the state aid formula so that neither school system would be penalized financially for this transition. The basic idea was to allow the contract to expire. The tuition paid to Northwest would become option funding and neither school would suffer wide swings in state aid due to that change. Although we thought we had planned well for the transition, a new problem cropped up during the certification of state aid for the current school year. The thinking was that past tuition revenue and future option funding would at least be the same, making the change a wash. Unfortunately, language excluding the option funding from converted contract option students wasn't included in the stabilization portion of the formula. The stabilization factor, which guarantees that a school won't go below 83.75 percent of the previous year's state aid, did not kick in. As a result, the Northwest system lost over \$188,000 in state aid. Now, LB 704 corrects the problem so it won't happen to any other school in the future. At least two other school districts have similar contracts that expire in the next five years. LB 704 does not recapture the lost state aid for Northwest. What's gone is gone. It merely changes the statute so that school districts won't be penalized in the future. Superintendent Bill Mowinkel of Northwest will follow me. Please direct any technical questions about this to him, and thank you for time and interest.

SENATOR RAIKES: Oh, shoot. (Laughter)

SENATOR McDONALD: You know, maybe I should go on those pain pills. (Laugh)

SENATOR RAIKES: Okay, thank you, Senator. Questions? All right, thank you. Proponents for LB 704. Yes, sir.

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LB 704

Welcome.

BILL MOWINKEL: (Exhibit 4) Good afternoon, Senators. My name is Bill Mowinkel, superintendent of Northwest High School, M-o-w-i-n-k-e-l. I'm here to testify in support of LB 704. In reality, it was upon my request this bill was introduced as a measure to correct an unforeseen shortcoming in current Statute 79-1008.01. To put it in perspective, you need a little background. In 2001, the Grand Island school district and the Northwest school district proposed passing a bill that would aid in the transition of contract students to state option students. The bill was introduced by Senator Rick McDonald and passed, thus becoming 79-1009.01. The intent of the bill was to keep either district from realizing a major impact from the transition. The process was placed in motion the November before it expired, according to the statute, the assumption being Grand Island state aid would be reduced approximately by the amount of tuition they were paying Northwest, and Northwest would increase. That isn't what happened and I filed a protest with the Department of Education that suggested taking concerns to the legislative branch, not the executive branch, as stated by Commissioner Christensen, "It is my belief you would best be served by taking your concerns about the positions on matters to the legislative branch, not the executive branch." I agree with Connie Knoche's previous statement that for this department to do any change would require an amendment to 79-1008.01, which is what this proposed legislation does. In 2003-04, Northwest received \$652,230 in equalization aid, \$848,721 in net option funding, and \$168,566 in allocated income tax funds, for a total of \$1,623,245 after an aid correction; \$4,252,819 in other actual receipts, for a total resources of \$8,963,363. Other actual receipts included tuition from the contract students of between \$2.6 million and \$2.9 million. When the new state aid was certified for the 2004-05 school year, we received \$152,449 in equalization aid, a decrease of \$472,000 or 75 percent; allocated income tax of \$155,653, or a decrease of \$12,912 or 7.6 percent. That part is clean. Now, let us look at option funding. It went up from \$848,721.48 to \$3,470,387, or an increase of \$2.6 million. Remember what I said tuition for those years was? If you subtract the tuition for '03-04, as was the expectation of 79-1009 passed, the state aid should have been not less than \$1,359,468, using the stabilization factor for that year

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which called for 83.75 percent. It is called for in 79-1008.01, subsection (3). I have also included how the option funding affected our Class I's because it seems there's feeling that they're their own district. I documented that and I'll pass it out later. The option money to Northwest really reduced their state aid. Our Cedar Hollow district went from \$431,000 to \$334,000, or they only got 77.57 percent of what they got the year before. For Merrick County, it went down \$54,000 or they only got 18 percent of what they got the year before. For St. Libory, it went from \$41,000 to \$8,000, or they only received 19 percent of what they got the year before. And for One-R, they got 95.2 percent of what they got the year before. Apply the 83.75 factor to each of those schools. After stating all that, I have included a factor sheet that computes the formula used, along with the proposed verbiage that would have been needed to correct the situation. This bill has no fiscal impact because Northwest cannot recapture the lost \$188,000 that is was shorted. But you have an opportunity to correct the legislation for future situations when a district has declining enrollment, and converting contract students to option students. This could happen when Class I's are assimilated or mergers happen with districts that students option into. The premise of this bill is, should there be a stabilization aid? And if that answer is yes, then this proposed bill needs to advance. Thank you for your attention. Are there any questions?

SENATOR RAIKES: Thank you, Bill. Questions? The stabilization factor, or your reductions in state aid, when you first say that, I mean what comes to mind is, okay, there's a lot of school districts that have found themselves in that sort of a situation. It's quite often associated with declining enrollments, increasing property valuations. Did you take all that into account?

BILL MOWINKEL: Our declining enrollment, yes. There was a decline of enrollment of about 40, 42 students.

SENATOR RAIKES: Okay, so part of the problem was due to that?

BILL MOWINKEL: Correct.

SENATOR RAIKES: Okay. Generally, I come to this, your

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language, I think, says that for schools dealing with converted contract option students,...

BILL MOWINKEL: Right.

SENATOR RAIKES: ...and how many of those are there in Nebraska?

BILL MOWINKEL: Well, there's probably more than we had envisioned when we passed this original bill because I think there's a lot of Class I's that contract their junior high students to someone.

SENATOR RAIKES: And they were switched to option students, like in your case?

BILL MOWINKEL: Well, in ours they were contract students because there wasn't state option funding when the original agreement was passed. But there's other contract students out there, and there's contract students for special education needs. There's more contract students out there than one would realize.

SENATOR RAIKES: But do they fit the converted contract option student that's the language in this bill?

BILL MOWINKEL: If a district were to merge with a district other than who they contract with, those students would become state option students, yes.

SENATOR RAIKES: Okay, well, I'll probably need to rephrase my question then based on that. But I was thinking, you know, in effect, raise...you know, this would raise the stabilization percentage for Northwest, but you're saying you would also raise it for some other school systems, do you think?

BILL MOWINKEL: If there, the only time this bill would even come into play is if there's a decline of enrollment and that district were to, where they were contracting from, they would merge or become a different district, then those kids have to option back to another district. So as I said, this bill would hardly ever come into play.

SENATOR RAIKES: But that wouldn't be the case for you.

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You're not merging in.

BILL MOWINKEL: Right, but those students will option back to our district that were contracting with us presently.

SENATOR RAIKES: Well, in effect, it's the same students. They were contract students, and now they're option students.

BILL MOWINKEL: That's correct.

SENATOR RAIKES: Okay. Any other questions? Well, I will you, I need to work on this a little bit.

BILL MOWINKEL: And on the back page, the formula is worked through on that. I've included it for you, what the current state aid was, what the 83.75 was. On the very last page, it's probably the best explanation you could have.

SENATOR RAIKES: Okay.

BILL MOWINKEL: It is very confusing, I agree with you. And I never thought it would be an issue, and nor did Senator McDonald when he introduced it. But we didn't anticipate a decline in enrollment.

SENATOR RAIKES: Okay. Well, I see no other questions, so thanks.

BILL MOWINKEL: Thank you.

SENATOR RAIKES: Any other proponents for LB 704? Excuse me, LB 704? Any opponents, LB 704? Neutral? Senator McDonald.

SENATOR McDONALD: And I will be brief. Don't blame my late husband for the mistake because he's not here to defend himself.

SENATOR RAIKES: Actually, I worked with your late husband on putting that bill together. And, actually, if there's a mistake, it was probably mine, so.

SENATOR McDONALD: Thank you.

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LB 704, LR 23

SENATOR RAIKES: Okay, that'll close the hearing on LB 704. And we'll now move to LR 23, and Senator Howard again. Welcome back.

LR 23

SENATOR HOWARD: (Exhibits 5 and 6) Thank you, sir. My name is Gwen Howard, H-o-w-a-r-d, and I'm here this afternoon to present information on No Child Left Behind. The No Child Left Behind Act is well-intentioned. It is clear that President Bush and his cabinet sincerely believe in the power of public education and want all children to have the opportunities they deserve. The aims are noble. All students to reach a minimum proficiency or better in reading and mathematics by 2013-14. By 2013-14, all students will be proficient in reading by the end of the third grade. All limited English proficient students will become proficient in English. By 2005-06, all students will be taught by highly-qualified teachers. All students will be educated in learning environments that are safe, drug-free, and conducive to learning. All students will graduate from high school. It is also clear that testing and accountability have a role in education. My predecessors in the Legislature, including our illustrious Chair, Senator Raikes, believed that testing was an important component of evaluating the effectiveness of the education we provide. That's why Nebraska was out in front in this issue, establishing statewide testing without sacrificing local control in the year 2000. But unfortunately, as is all too often the case with federal mandates, well-intentioned goals become lost in the details, and those being mandated are left to deal with the consequences. This has been the situation faced by many states in regard to No Child Left Behind. For instance, No Child Left Behind's rigid rules and standards are forcing schools that are clearly accomplishing their mission of educating children, to spend time and limited resources on fulfilling the criteria established by the act. For instance, President Bush toured the country last May to promote No Child Left Behind and stopped at Vandenberg Elementary School in Southfield, Michigan, where he was quoted as saying, "This is a successful school. This school doesn't quit on kids, and that's why it's heralded for its excellence." A few weeks later, Vandenberg found itself on

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the Michigan low-performing schools list. USA Today found 19 U.S. Department of Education blue ribbon exemplary schools on its low-performing list. As a result, states are left to find the financial resources necessary to comply with the act's provision. Now, as this all relates to Nebraska, truthfully, we are uncertain. The only numbers we have regarding No Child Left Behind's cost to Nebraska are those determined by outside groups, and none of them agree on the numbers. So let me tell you what the National Education Association and other various federal education watchers believe. On the federal level, No Child Left Behind Act is \$9 billion below what Congress said would be necessary to implement the activities of the program. For the upcoming fiscal year 2004 and \$32 billion below full funding in 2003. In Nebraska, it appears we will be nearly \$30 million short of full funding for the budget year 2005. Now, you have a sheet in front you, however, you don't, but should. If you could make a copy of...oh, you do, wonderful. You have that sheet provided by the National Education Association that lists all the districts in the state and how they are faring with 2005 funding. My aide had chosen a few districts to highlight, for those random districts just happened to be in the legislative districts of my fellow Education Committee members, is, of course, coincidence. And you can check down these figures. I won't read those all to you. There are others following me with more specifics on how No Child Left Behind affects the educational environments. I would conclude by saying this resolution is both timely and premature. I think it is timely from the standpoint that as a Legislature, we must begin to think through the financial and educational implications of No Child Behind. However, it is premature in that we ourselves do not have firm figures on the full cost of No Child Left Behind in our state. After discussions with folks from the State Department of Education, I thought it might be wise to offer an alternative to the discussion. And, in fact, we have an amendment which we have put in, and I believe you have that now. Thank you. While it's unusual to offer an amendment to a legislative resolution, I think what I am handing out deals more accurately with what we need to accomplish. We need to find out for ourselves what the numbers are before we approach our congressional delegation, and this amendment would ask the state board and the department to begin to determine those numbers. I should also point out in closing

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that the money and effort spent on No Child Left Behind is in addition to Nebraska's own successful testing and accountability model. In Nebraska, we are essentially duplicating work to aid the federal government in their attempts to reform problem schools that are mostly in other states. The Department of Education, in fact, has been recognized as a successful model by the feds, and one of their goals is to preserve that status. Therefore, I am hopeful that the Nebraska Legislature will send a respectful, but should I say pointed, message to Congress? If the goals of No Child Left Behind are important to federal oversight of education, then the federal government should ensure that it is fully funded. Thank you.

SENATOR RAIKES: Thank you, Senator Howard. Questions?
Senator Stuhr.

SENATOR STUHR: Yes, Senator, could you tell me how much money that Nebraska has received for No Child Left?

SENATOR HOWARD: That's an excellent question. I believe one of the presenters following me will have those figures for you.

SENATOR STUHR: Okay. All right, thank you.

SENATOR RAIKES: Okay, any other questions? Thank you, Senator.

SENATOR HOWARD: Thank you, thank you.

SENATOR RAIKES: Proponents for LR 23.

DUANE OBERMIER: Senator Raikes, members of the Education Committee, my name is Duane Obermier. It's D-u-a-n-e O-b-e-r-m-i-e-r, and I am president of the Nebraska State Education Association and I am not the one that the Senator referred to who has all the numbers in his head. I do, however, want to very publicly thank Senator Howard for bringing this resolution to this committee and hopefully on to the Legislature. I jotted down a couple things that the Senator said as she was speaking. She said that No Child Left Behind is well-intentioned. Who in the world could argue with a phrase like, "No Child Left Behind?" It is well-intentioned, but it has problems and one of the many

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problems is in the funding. And I am very pleased, or will be pleased when this becomes a legislative resolution, that Nebraska will join 32 other states that have problems with this law. And it is a law. It is not a proposal. It is something that schools, teachers, everyone has to live with, and it needs to be corrected. There are flaws that need to be rectified, and one of the flaws is in the funding. I agree with the Senator that we need to send the...the Legislature needs to send a very spectral but very direct, pointed message to the United States Congress. And this one, as I understand it, would deal with the funding. And that is very much needed and I urge your support of this legislative resolution.

SENATOR RAIKES: Thank you, Duane. Questions? Senator Stuhr.

SENATOR STUHR: Yes, Duane, do you have any idea what the amount of money that Nebraska has received?

DUANE OBERMIER: I don't have that with me. I could get that information and get it to you, and I will do that.

SENATOR STUHR: Okay. I'd like to see a comparison to other years in the amount of money since this act had been adopted, comparing the amount of money that we have received.

DUANE OBERMIER: I will get what information I can on the funding that has taken place since No Child Left Behind, and what the promises were, and what the reality is.

SENATOR STUHR: Thank you.

SENATOR RAIKES: Duane, in the first "whereas," it says "ensure qualified and fairly compensated teachers." Does the No Child Left Behind Act deal with teacher salaries?

DUANE OBERMIER: To my knowledge, not with teacher salaries. It deals with teacher requirements. And, in fact, the feds were here just fairly recently and we may be finding out that even though we have rigorous preparation requirements for classroom teachers in this state, we may find that many of our teachers are under the provisions of No Child Left Behind by federal interpretation, but they are not highly

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qualify. But it does not address salaries to my knowledge.

SENATOR RAIKES: Okay. Does it say anything about an adequate education?

DUANE OBERMIER: That the students receive?

SENATOR RAIKES: Right.

DUANE OBERMIER: I don't think it defines what adequate is, except whether or not students can pass tests.

SENATOR RAIKES: Okay, all right. Any other questions? Thank you.

DUANE OBERMIER: If can make one more comment.

SENATOR RAIKES: Sure.

DUANE OBERMIER: I believe that the No Child Left Behind law is something like 1,200 pages long. So there could well be provisions in it that I am not aware of.

SENATOR RAIKES: Could be an adequate in there someplace.

DUANE OBERMIER: There could be.

SENATOR RAIKES: Yeah, okay. Fair enough. All right. Okay, thank you, Duane. Other proponents, LR 23. Oh, here's the numbers guy. Econometrics, I suppose.

JOHN LINDSAY: Senator Raikes, members of the committee, for the record, my name is John Lindsay, L-i-n-d-s-a-y, appearing on behalf of Omaha Public Schools. And, Senator Raikes, picking up on your comment, I actually did read the term "regression analysis" recently...

SENATOR RAIKES: Good. You're coming along. Yeah.

JOHN LINDSAY: ...so I'm getting closer to your... OPS does not take a position on No Child Left Behind, whether it's good, bad. What we do say is that it is the law. And given the fact that it is the law, we do believe that it should be fully funded. And for that reason, we support LR 23. With that, I'd be happy to answer any questions.

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SENATOR RAIKES: Okay, thank you, John. Questions? Senator Bourne.

SENATOR BOURNE: Just real quick, Senator Lindsay. Just curiosity, I've seen...we've done this a number of times in the last six years that I've been in the Legislature, but you've been here a lot longer than I have. Has Congress or anybody from the federal delegation ever responded to a resolution from our Legislature?

JOHN LINDSAY: I don't know that. That's actually a good question. I suspect that we've gotten, the Clerk's Office may have gotten letters back from a senator's office or a representative's office acknowledging receipt of it. I think it's more to show that there is support out in the states for Congress to do something. It's more of a bully pulpit than a...

SENATOR BOURNE: By respond, I mean, did something; not a letter, but did something.

JOHN LINDSAY: Oh. Oh, well, I can't point to any examples, no.

SENATOR RAIKES: The obvious answer is sometimes a nonresponse is a response.

JOHN LINDSAY: Yeah, and I can't point to any examples, no. But I'd be willing to do an econometric model to try to see if a response is available. (Laughter)

SENATOR RAIKES: The question about how the federal government,...and you're much more qualified than a lowly economist; you're a lawyer...isn't it the case that K-12 public education is the province of states, not the federal government?

JOHN LINDSAY: Yes.

SENATOR RAIKES: So how can they force, how can the federal government force the states to do something like No Child Left Behind?

JOHN LINDSAY: My understanding, without having read

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1,200 pages of the act, my understanding is that it wasn't a force. It was more of a carrot approach, that if we have standards...if you adopt standards, we have money available. The state has adopted the standards according to the requirements that are in the act.

SENATOR RAIKES: So there's no stick with it, no stick like, well, not only do we have money available, but you've been getting some Title I funding, and if you don't do No Child Left Behind, you can forget the Title I funding.

JOHN LINDSAY: I don't know that. I would defer maybe to...

SENATOR RAIKES: It's strange that...well, school systems that are in the know such as OPS, are struggling to comply with these requirements, costly as they might be, yet there's no real understanding of the consequences of not complying with them?

JOHN LINDSAY: For me personally, that would be accurate. Now, there would be those at OPS that would have very intimate knowledge about what that would be.

SENATOR RAIKES: Okay, all right.

JOHN LINDSAY: And I'd be happy to have them visit with you about that.

SENATOR RAIKES: Sure, that would be...I would appreciate that.

JOHN LINDSAY: Yes.

SENATOR RAIKES: Senator Stuhr.

SENATOR STUHR: Yes, John, I was wondering if you, too, could find me some figures on how much actually funding Omaha Public Schools has received...

JOHN LINDSAY: Yes, we can.

SENATOR STUHR: ...for the program.

JOHN LINDSAY: Yes, we can.

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SENATOR STUHR: Okay, thank you.

SENATOR RAIKES: Okay, any other? Thank you, John. We are on, must be proponents, LR 23. Virgil.

VIRGIL HORNE: Senator, Virgil Horne, H-o-r-n-e, representing the Lincoln Public Schools. If I understand the amendment that was passed out, it said that part of this proposal would be that the State Department of Education in Nebraska generate the numbers that we're talking about. Is that correct?

SENATOR RAIKES: Yes.

VIRGIL HORNE: If that is the correct, then we certainly support this bill. We did have concerns about using numbers that were generated outside of the state and then trying to defend those to congressmen that may be upset with us to start with. We would also suggest, with all due respect to the introducer, that we also recognize the efforts that are being made by Nebraska senators in full funding for special education. As we write this type of thing, it would be an additional amendment. But unfortunately, that too has gone lacking, drastically. And it is a very important issue that needs to be recognized, and with the efforts of Senator Hagel to accomplish that, if we have some kind of a resolution of this nature that could be added, it would be greatly appreciated as far as the Lincoln Public Schools are concerned. Thank you.

SENATOR RAIKES: Okay, thank you. Questions? Thank you, Virgil. Any other proponents, LR 23? Opponents? Neutral?

D'ANNE WELCH: My name is D'Anne Welch. It's spelled D-'A-n-n-e, Welch is with a c, and I am glad to have followed Virgil Horne because that was exactly what I waited to say. This year, 2005, marks 30 years, three complete decades since the federal government promised 40 percent of excess costs for special education funding. Three decades, and we're not even halfway to the goal. When President Bush pressed the American people for this No Child Left Behind, I snickered and sneered at the people who believed in it. I don't believe in it. I don't believe in the federal government. I believe in the Tenth Amendment to the U.S. Constitution. This is a state's rights issue. We need to

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just tell the feds to get off. Thank you.

SENATOR RAIKES: Okay, thank you, D'Anne. All right, any other neutral testimony? Senator Howard.

SENATOR HOWARD: Senator Stuhr, I apologize that we don't have those figures for you. That was certainly a worthy question that you asked for those numbers. We had expected someone from the Education Department to be here and produce those, but hopefully the people that have made promises to you will be there for you. I would like to, in closing, say that I really, I applaud the valiant efforts that our education system in Nebraska makes to attain the goals set forth in the No Child Left Behind bill. Through this resolution, this is an attempt to endorse their efforts to show them that we are there for them and we understand the problem and we'll do whatever we possibly can to assist them with that. So I thank you for your time and your consideration.

SENATOR RAIKES: Thank you. Questions? Senator Bourne.

SENATOR BOURNE: Thank you. Senator Howard, did you say that someone from the state, Nebraska State Department of Education would be here on your...

SENATOR HOWARD: That was our expectations here.

SENATOR BOURNE: ...on your request, and they're not here?

SENATOR HOWARD: Well, can I get assistance?

SENATOR BOURNE: No. They said they'd...

SENATOR HOWARD: Well, that was my understanding from my aide.

SENATOR BOURNE: Okay, thank you.

SENATOR RAIKES: Okay, thank you, Senator. And that will close our hearing on LR 23 and the hearings for this afternoon. Thank you for being here. (See also Exhibit 7)